

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM SIMMONS,

Defendant-Appellant.

UNPUBLISHED

November 22, 2011

No. 298895

Wayne Circuit Court

LC No. 10-000702-FH

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of second-degree home invasion, MCL 750.110a(3), and possession of burglar's tools, MCL 750.116. He was sentenced to 2 to 15 years' imprisonment on the home invasion conviction and to 2 to 10 years' imprisonment on the burglar tools conviction. Defendant appeals as of right. We affirm.

Two Detroit police officers responded to a breaking and entering in progress at the victim's home after an alert was sounded by the victim's alarm system company. When police arrived, they observed defendant come from behind the home carrying a crowbar, at which point defendant uttered a profanity and fled the scene. One officer proceeded to chase defendant, but he gave up the foot pursuit in order to provide assistance to his partner who had been struck by a laptop computer thrown by a codefendant after the codefendant was stopped upon exiting the same residence from which defendant had fled. The codefendant was caught after a brief pursuit, and defendant was arrested 15 minutes later when another police officer observed defendant trying to hide under a car one or two blocks away from the victim's home. On inspection of the victim's home, it was discovered that back windows had been broken, a DTE meter had been pulled down and damaged, the electricity did not work, the home alarm was beeping, two wall-mounted televisions were hanging down, the victim's bed was flipped over, her laptop computer and money were missing, and the home was ransacked. The victim did not know defendant or the codefendant and did not give either one of them permission to enter the home or to take her property.

On appeal, defendant first argues that there was insufficient evidence establishing his identity as the perpetrator. Defendant does not argue that the evidence was insufficient to show that a second-degree home invasion took place, nor does he challenge the evidence of the police observing an individual exiting the house carrying or possessing burglar's tools. He simply

contends that the evidence was constitutionally deficient relative to proving that he was the person observed by police and caught in the act of committing the crimes. In support, defendant maintains that the two responding police officers only saw him for a few seconds at the victim's home, that the officers identified him as wearing a grey-hooded jacket, however, he was wearing a black jacket when arrested, that the two responding officers were not involved in his later arrest, and that fingerprint evidence could have been produced but was not.

Identity is an essential element of every criminal offense. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976); *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). The positive identification of a defendant by witnesses may be sufficient to support the defendant's conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Moreover, the credibility of a witness giving identification testimony is a question for the trier of fact that this Court does not resolve anew. *Id.* Here, one of the responding officers identified defendant in court as the person she observed exiting the victim's house and carrying the crowbar. The officer additionally testified that she saw defendant in a police station cellblock right after his arrest and that he was the same individual whom she had just observed and confronted at the victim's house; he was the person carrying the crowbar. Further, the other responding police officer identified defendant in court as the perpetrator seen coming out of the victim's house with a crowbar. Moreover, identity can also be proven by circumstantial evidence, *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967), and defendant was found hiding under a nearby car shortly after fleeing the crime scene.¹ Viewing the direct and circumstantial evidence of identity in a light most favorable to the prosecution, a rational trier of fact, here the trial judge, could find beyond a reasonable doubt that defendant was indeed the perpetrator. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Issues concerning the brevity of the officers' encounter with defendant and the inconsistencies relative to the jacket pertain to the officers' credibility and the weight of the evidence, which are matters for the trier of fact that we will not resolve anew. *Id.* at 514-515; *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007) ("This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses"); *Davis*, 241 Mich App at 700.² With respect to fingerprinting, defendant does not cite any authority mandating the police to obtain prints and, for purposes of a sufficiency argument, our focus is on the evidence actually presented, not speculative matters. Reversal is unwarranted.

¹ A discarded grey hoodless jacket was found in the backyard of a nearby home, and the two responding police officers testified that this was the jacket that defendant was wearing, even though they had initially believed that it was a hooded jacket.

² When making his argument regarding inconsistencies in the description of the jacket, defendant states that it "is important to remember that this all occurred in broad daylight." That particular observation would seem equally applicable to the officers' ability to see and identify defendant as one of the perpetrators.

Defendant next argues that the home invasion conviction, predicated on an aider and abettor theory, cannot be sustained because there was no evidence establishing a connection between him and the codefendant; rather, the evidence only revealed that defendant was merely present at the scene. This argument fails because there was sufficient evidence showing an aiding and abetting connection between defendant and the codefendant. There was evidence that windows in the home had been broken, that the alarm system had been activated, that defendant and his codefendant, neither of whom had permission to enter the home, were caught coming out of the house at about the same time, that the codefendant was carrying the victim's laptop computer, that money and property were missing from the home, that defendant had a burglar tool in his possession, i.e., the crowbar, and that both perpetrators fled police. From this evidence and the reasonable inferences that arise from the evidence, a rational trier of fact could conclude that the codefendant entered a dwelling by a breaking and without permission with the intent to commit a larceny inside, thereby committing second-degree home invasion, that defendant performed acts that assisted the commission of that crime, and that defendant intended the commission of the crime or had knowledge that the codefendant intended its commission when aid was given. MCL 767.39; *People v Robinson*, 475 Mich 1, 5-6; 715 NW2d 44 (2006); *People v Nutt*, 469 Mich 565, 593; 677 NW2d 1 (2004); *Carines*, 460 Mich at 757. This evidence also supports defendant's conviction of second-degree home invasion as a principal, as well as the conviction for possession of burglar's tools. Reversal is unwarranted.³

Affirmed.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Amy Ronayne Krause

³ Defendant asserts an ineffective assistance of counsel claim in his statement of questions presented; however, defendant fails to provide any explanation or arguments whatsoever in support of this claim. Accordingly, the issue has been abandoned by defendant. See *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001).